

[TRANSLATION — TRADUCTION]

TREATY BETWEEN THE REPUBLIC OF ARMENIA AND THE FEDERAL
REPUBLIC OF GERMANY CONCERNING THE ENCOURAGEMENT
AND RECIPROCAL PROTECTION OF INVESTMENTS

The Republic of Armenia and the Federal Republic of Germany,
Desiring to intensify economic cooperation between two States,
Striving to create favourable conditions for investments made by the nationals or companies of one State in the national territory of the other,
Recognizing that the encouragement of such investments and their protection on the basis of a treaty are likely to stimulate economic initiative and increase the prosperity of both peoples,
Have agreed as follows:

Article 1

For the purposes of the present Treaty:

1. The term "investments" shall comprise all types of assets, in particular:

- (a) Movable and immovable property, as well as other rights in rem such as mortgages and liens;
- (b) Shares in companies and other forms of participation in companies;
- (c) Claims to money used to create an article of economic value, or claims to services which have an economic value;
- (d) Intellectual property rights, such as copyright, patents, utility models, industrial patterns and models, trademarks, trade names, business and trade secrets, technical processes, know-how and goodwill;
- (e) Business concessions, including prospecting and mining concessions.

Any alteration of the form in which assets are invested shall not affect their classification as an investment.

2. The term "returns" shall mean the amounts yielded by an investment over a certain period, such as percentages of profits, dividends, interest, and licence or other fees.

3. The term "nationals" shall mean:

- (a) in respect of the Federal Republic of Germany: Germans within the meaning of the Basic Law of the Federal Republic of Germany;
- (b) in respect of the Republic of Armenia: natural persons who, according to the law, are nationals of the Republic of Armenia.

4. The term "companies" shall mean:

- (a) in respect of the Federal Republic of Germany: any legal person, commercial or other company or association, with or without legal personality, having its domicile in the

territory of the Federal Republic of Germany, irrespective of whether its activities are profit-oriented;

(b) in respect of the Republic of Armenia: any legal person, company, firm, business or other organization established in accordance with the law of the Republic of Armenia and located in the territory of the Republic of Armenia.

Article 2

(1) Each Contracting Party shall in its territory as far as possible promote investments made by nationals or companies of the other Contracting Party and shall permit these investments in accordance with its legislation. In every case it shall accord investments fair and equitable treatment.

(2) Neither Contracting Party shall prejudice in any way by means of arbitrary or discriminatory measures the management, employment, use or enjoyment of investments of nationals or companies of the other Contracting Party in its territory.

Article 3

(1) Each Contracting Party shall accord to investments in its territory, which are the property or under the influence of nationals or companies of the other Contracting Party, treatment that is no less favourable than that which it accords to investments of its own nationals and companies or investments of nationals or companies of third States.

(2) Each Contracting Party shall accord to nationals or companies of the other Contracting Party, in respect of their activities in connection with investments in its territory, treatment that is no less favourable than that which it accords to its own nationals and companies or nationals and companies of third States.

(3) This treatment shall not apply to prerogatives which a Contracting Party grants to the nationals or companies of third States by virtue of membership of or association with a customs or economic union, common market or free-trade area.

(4) The treatment accorded in pursuance of this Article shall not apply to privileges which a Contracting Party grants to the nationals or companies of third States under a double taxation agreement or other agreements regarding matters of taxation.

Article 4

(1) Investments by nationals or companies of a Contracting Party shall enjoy full protection and full security in the territory of the other Contracting Party.

(2) Investments by nationals or companies of a Contracting Party may not be subjected to expropriation, including nationalization, or other measures the effects of which would be tantamount to expropriation or nationalization in the territory of the other Contracting Party, save in the public interest and against compensation. Compensation must be equivalent to the value of the expropriated investment immediately preceding the moment at which the actual or imminent expropriation, including nationalization or other comparable measures, becomes publicly known. Compensation must be paid promptly and shall bear interest at

the usual bank rate until the day on which it is paid. It must be effectively realizable and freely transferable. Appropriate provision shall be made for the assessment and payment of compensation no later than the moment at which the expropriation, nationalization or comparable measure occurs. The lawfulness of the expropriation, nationalization or similar measure and the amount of compensation shall be susceptible of review under a process of law.

(3) Nationals or companies of a Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflicts, revolution, a state of national emergency or revolt, shall be accorded no less favourable treatment by the latter Contracting Party than that Party accords to its own nationals or companies with regard to restitution, settlements, compensation or other valuable consideration. Such payments shall be freely transferable.

(4) Nationals or companies of a Contracting Party shall receive most-favoured-nation treatment in the territory of the other Contracting Party in respect of the matters provided for in this Article.

Article 5

Each Contracting Party shall guarantee to nationals or companies of the other Contracting Party the free transfer of payments in connection with an investment, in particular:

- (a) of the capital and additional amounts for maintaining or increasing the investment;
- (b) of returns;
- (c) in repayment of loans;
- (d) of the proceeds from the complete or partial liquidation or sale of the investment;
- (e) of the compensation provided for in Article 4.

Article 6

If a Contracting Party makes a payment to its nationals or companies under a guarantee in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party, without prejudice to the rights of the first Contracting Party under Article 10, shall recognize the assignment of all rights and claims of those nationals or companies with respect to the first Contracting Party by virtue of law or a contract. The other Contracting Party shall further recognize the subrogation of the first Contracting Party to all those rights or claims (assigned claims), which the first Contracting Party is entitled to exercise to the same extent as its predecessor in title. Article 4 (2) and (3) and Article 5 shall apply *mutatis mutandis* to the transfer of payments by virtue of the assigned claims.

Article 7

(1) Transfers under Article 4 (2) or (3) or Articles 5 or 6 shall take place promptly at the exchange rate in effect at the time.

(2) This rate must be the equivalent to the cross rate resulting from the rates of exchange which the International Monetary Fund would take as a basis for converting the currencies in question into Special Drawing Rights at the moment of the transfer.

Article 8

(1) If the legislation of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Treaty result in general or specific rules entitling investments by nationals or companies of the other Contracting Party to treatment more favourable than is provided for by this Treaty, such rules, to the extent that they are more favourable, shall prevail over this Treaty.

(2) Each Contracting party shall honour any other obligation it has accepted with regard to investments in its territory by nationals or companies of the other Contracting Party.

Article 9

This Treaty shall also apply to investments made by nationals or companies of either Contracting Party in the territory of the other Contracting Party, in accordance with the legislation of the latter, before the entry into force of this Treaty.

Article 10

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Treaty shall be settled, if possible, by the Governments of the two Contracting Parties.

(2) If a dispute cannot thus be settled, it shall be submitted to a court of arbitration upon the request of either Contracting Party.

(3) The court of arbitration shall be constituted for each individual case as follows: each Contracting Party shall appoint one member and those two members shall agree upon a national of a third State as umpire, to be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months and the umpire within three months from the date on which either Contracting Party informs the other that it wishes to submit the dispute to a court of arbitration.

(4) If the periods specified in paragraph 3 have not been observed, in the absence of any other agreement either Contracting Party may invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party, or if he is otherwise prevented from making the appointments, the Vice-President shall make them. If the Vice-President is also a national of either Contracting Party or if he, too, is prevented from making the appointments, the member of the Court next in seniority who is not a national of either Contracting Party shall make them.

(5) The court of arbitration shall reach its decision by a majority of votes. Its decisions shall be binding. Each Contracting Party shall bear the costs of its own member and of its counsel in the arbitral proceedings; the costs of the umpire and other costs shall be borne in equal parts by both Contracting Parties. The court of arbitration may make different ar-

rangements concerning costs. In all other respects, the court of arbitration shall determine its own procedure.

(6) If both Contracting Parties are Contracting States to the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, the court of arbitration provided for above may in consideration of the provisions of Article 27 (1) of the said Convention not be appealed to insofar as agreement has been reached between the national or company of one Contracting Party and the other Contracting Party under Article 25 of the Convention. This shall not affect the possibility of appealing to such court of arbitration in the event that a decision of the Arbitration Tribunal established under the said Convention is not complied with (Article 27) or in the case of an assignment under a law or pursuant to a legal transaction as provided for in Article 6 of the present Agreement.

Article 11

(1) Disputes regarding investments between one of the Contracting Parties and a national or company of the other Contracting Party shall, as far as possible, be settled amicably between the parties to the dispute.

(2) If the dispute cannot be settled within six months from the time of its being raised by one of the parties to it, it shall be submitted to arbitration proceedings if the national or company of the other Contracting Party so requests. Unless the parties to the dispute decide otherwise, the provisions of Article 10 (3) to (5) shall be applied *mutatis mutandis*; the members of the court of arbitration shall be appointed by the parties in dispute in accordance with Article 10 (3), but if the periods specified in Article 10 (3) are not observed, either party in dispute may, in the absence of other arrangements, invite the President of the Court of Arbitration of the International Chamber of Commerce at Paris to make the required appointments. The ruling shall be enforced in accordance with domestic law.

(3) A Contracting Party which is party to the dispute shall not at any stage of the arbitration proceedings or enforcement of an arbitration ruling raise the objection that the national or company of the other Contracting Party has received compensation from an insurance policy for part or all of the damage.

(4) If both Contracting Parties are Contracting States to the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, disputes in the sense of this Article between the parties in dispute shall be submitted to arbitration proceedings under the said Convention, unless the parties in dispute reach some other agreement; each Contracting Party hereby declares its agreement with such a way of proceeding.

Article 12

This Treaty shall apply irrespective of whether diplomatic or consular relations exist between the Contracting Parties.

Article 13

(1) The present Treaty requires ratification. The instruments of ratification shall be exchanged at Bonn as soon as possible.

(2) The present Treaty shall enter into force one month after the exchange of the instruments of ratification. It shall remain in force for 10 years; thereafter its validity shall be extended for an unlimited period unless denounced in writing by either of the Contracting Parties twelve months before its expiration. After the expiry of the ten-year period the Treaty may be denounced at any time with 12 months' notice.

(3) In respect of investments made prior to the date of termination of the present Treaty, Articles 1 to 12 shall continue to apply for a further period of 20 years as from the date of termination of the Treaty.

Article 14

With the entry into force of the present Treaty the Agreement of 13 June 1989 between the Federal Republic of Germany and the Union of Soviet Socialist Republics concerning the promotion and reciprocal protection of investments, as it applies to relations between the Federal Republic of Germany and the Republic of Armenia, shall cease to be applicable.

Done at Eriwan on 21 December 1995 in duplicate in the German and Armenian languages, both texts being equally authentic.

For the Republic of Armenia:

[ILLEGIBLE]

For the Federal Republic of Germany:

[ILLEGIBLE]

PROTOCOL

On signing the Treaty concerning the Encouragement and Reciprocal Protection of Investments, concluded between the Republic of Armenia and the Federal Republic of Germany, the undersigned plenipotentiaries have further agreed on the following provisions, which shall be regarded as an integral part of the Treaty:

(1) Ad Article 1

(a) Returns from the investment and, in the event of their reinvestment, the returns therefrom also, shall enjoy the same protection as the investment.

(b) Without prejudice to any other procedure to determine nationality, in particular every person who possesses a national passport issued by the relevant authorities of the Contracting Party in question shall be deemed a national of the Contracting Party.

(2) Ad Article 2

(a) Investments made by nationals or companies of a Contracting Party in accordance with the legislation of the other Contracting Party and in its territory shall enjoy the full protection of the Treaty.

(b) The Treaty shall also apply in the areas of the exclusive economic zone and the continental shelf, insofar as international law permits the Contracting Party concerned to exercise sovereign rights or powers in those areas.

(3) Ad Article 3

(a) The following in particular, but not exclusively, shall be deemed "activities" within the meaning of Article 3 (2): the management, employment, use and enjoyment of an investment. The following in particular shall be deemed "less favourable" treatment within the meaning of Article 3: differing treatment in the event of restrictions on the purchase of raw or auxiliary materials, energy, fuels or productive or operational equipment of all kinds, differing treatment in the event of impediments to the sale of products on the domestic or foreign market, and other measures having similar effects. Measures which have to be taken on grounds of public security and order, public health or morals shall not be deemed "less favourable" treatment within the meaning of Article 3.

(b) The provisions of Article 3 shall not oblige a Contracting Party to extend to natural persons or companies domiciled in the territory of the other Contracting Party tax privileges, exemptions or reductions which, according to its tax law, are granted solely to natural persons and companies domiciled in its territory.

c) The Contracting Parties shall, within the framework of their national legislation, give sympathetic consideration to applications for the entry and sojourn of persons of either Contracting Party who wish to enter the territory of the other Contracting Party in connection with an investment; the same shall apply to employed persons of either Contracting Party who wish to enter the territory of the other Contracting Party in connection with an investment and to remain there in order to take up employment. Applications for work permits shall likewise be given sympathetic consideration.

(4) Ad Article 4

Entitlement to compensation shall also exist if, because of measures taken at national level, the enterprise in which the investment has been made is encroached upon and its economic value is thereby considerably reduced.

(5) Ad Article 7

A transfer shall be deemed to have been "promptly" carried out within the meaning of Article 7 (1) if effected within the period of time normally required for compliance with transfer formalities. The period shall commence with the submission of the relevant application and may under no circumstances exceed two months.

(6) Whenever goods or persons are to be transported in connection with an investment, a Contracting Party shall neither exclude nor hinder transport enterprises of the other Contracting Party and, if necessary, shall issue permits as required to carry out the transport. This shall include the transportation of:

(a) Goods which are directly intended for the investment within the meaning of the Treaty, or which are purchased in the territory of a Contracting Party or of a third State by an enterprise or by order of an enterprise in which assets within the meaning of the Treaty have been invested;

(b) Persons travelling in connection with an investment.

Done at Eriwan on 21 December 1995 in duplicate in the German and Armenian languages, both texts being equally authentic.

For the Republic of Armenia:

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For the Federal Republic of Germany:

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